



Proposed improvements to HIA inquiry compensation

Lundy, P. (2018, Oct 10). Proposed improvements to HIA inquiry compensation. Ulster University.

[Link to publication record in Ulster University Research Portal](#)

Publication Status:

Published (in print/issue): 10/10/2018

Document Version

Publisher's PDF, also known as Version of record

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Briefing Paper

Proposed improvements to HIA inquiry compensation

The panel of experts on redress

September 2018

The Hart Inquiry Compensation Recommendations

The Panel of Experts on Redress consulted widely with survivors of historical child abuse about the Hart Inquiry compensation recommendations. The consensus was that the recommendations fall short of meeting survivors needs.

Below we set out each component of the compensation recommendations. Each of the components is assessed and suggested improvements are presented. The Panel's proposals for improvement are based on research and wide consultation with survivors undertaken by Professor Lundy (Ulster University),¹ in collaboration with the Panel of Experts on Redress (see full Position Paper for details of consultation undertaken).

1. HIAI Recommended - Standard Payment

- Standard payment of £7,500
- Standard payment is the same for everyone
- To qualify for the standard payment, survivors should prove that they lived in a harsh environment or witnessed abuse.
- And, prove they were in an institution between 1922 and 1995, & under age of 18.
- Making a claim is paper only process.
- No survivors will appear before the Redress Board, except in exceptional circumstances.

Response - Panel of Experts

- Standard payment should not be the same for everyone.
- Should reflect length of time spent in an institution.
- Systemic abuse found in the 22 institutions HIAI investigated ensures those survivors will receive the standard payment.
- Those who attended uninvestigated (54)² institutions will have to prove eligibility.
- Survivors from uninvestigated institutions or survivors who didn't appear before the HIAI should be given the opportunity (choice) to appear before the Redress Board.

2. HIAI Recommended - Serious abuse claims

- Survivors who suffered more serious forms of abuse should be entitled to a payment up to a maximum of £72,500 (plus standard payment of £7,500 pounds = £80,000).
- Survivors should have to prove the abuse happened and it caused them harms. Based on paper only process...
- No compensation for loss of opportunity. These losses should go through civil court.
- Survivors should not give evidence in person to the Redress Board, except in exceptional circumstances.
- Statements made at the HIAI should be used.

¹ The work was funded by a Leverhulme Trust Senior Research Fellowship.

² There were 76 institutions within the HIA Inquiry terms of reference, 22 were investigated.

Response - Panel of Experts

- Compensation for loss of income or loss of opportunity should be included in the redress plan.
- The cap of £80,000 should be raised to accommodate these claims.
- Prejudicial prior statements made to the HIAI should not be used against claimants.
- Survivors should be offered the option (choice) of giving oral evidence, especially those who did not appear before the HIAI.
- Oral evidence should be taken in an inquisitorial fashion, not an adversarial one.
- Claimants should be allowed to be accompanied by support person or a lawyer when giving oral evidence.

3. HIAI Recommended - Deceased claimants

- Heirs of eligible deceased survivors should be able to claim only 75% of the amount owing to the deceased for their abuse compensation.
- Deceased should have died before Sept. 29, 2011 to be eligible.

Response - Panel of Experts

- Heirs of eligible deceased claimants should get 100% of the monies owing to the deceased.
- The cut-off date for claims should be the date that the state was made aware of systemic institutional abuse. According to the HIAI that date was at least April 1953. (Vol. 1 page 44, 45).

4. HIAI Recommended - Prior lawsuits

- Claimant cannot claim if they have received compensation from a court or out of court settlement.
- Claimant cannot “top up” amount received.
- But if the survivor’s court award was for abuse at one institution, they can make a claim for abuse at a second institution to the Redress Board.
- If a civil case failed because of the ‘time bar’/ limitations, they should be able to apply to the Redress Board

Response - Panel of Experts

- If the awards of compensation for harms under the Redress Board are higher than those offered by the courts for the same injuries, the Redress Board should be able to “top up” the award received from the courts.

5. HIA Recommended - Redress Board, Design & Process

- The HIAI Report does not specify whether the Redress Board should be a legislative or administrative process.
- A specific HIA Redress Board should be established to administer the compensation scheme.
- It should be responsible for receiving and processing applications for, and making payments of, compensation, and should be set up by the Northern Ireland Executive.

- Adjudicators should be drawn from the judiciary, either practising or retired.
- A single judge sitting alone should decide on eligibility and compensation.
- Only in exceptional cases should oral or new evidence be considered. In both the standard payment and individual assessment in serious abuse awards, oral evidence should not be permitted except in exceptional circumstances.

Response - Panel of Experts

- There should be a multidisciplinary Redress Board made up of a range of disciplines: legally and medically trained people, individuals with a therapeutic background with specialised knowledge in the fields of psychology or psychiatry and with knowledge and understanding of child abuse.
- Redress schemes are supposed to offer an alternative to the judicial route. The proposed Redress Board and processes replicate the County Court model in Northern Ireland.
- There should be a reasonable balance between the number of men and women appointed to the Board. Survivors should have the option of choosing between a male or female adjudicator.
- A 'paper only' process puts a very heavy burden on survivors. Proving 'damage' through institutional records, police reports or physiological assessments alone that may not be complete or accurate will result in many worthy claims being dismissed. The HIAI identified serious gaps and inaccuracies in institutional records.
- From a survivor perspective, oral evidence should be introduced as a matter of choice; it should not be mandatory. Without choice, survivors who did not attend the HIAI, may be disadvantaged.